

REMARKS

Claims 1, 4-10, and 12 currently appear in this application. The Office Action of September 29, 2004, has been carefully studied. These claims define novel and unobvious subject matter under Sections 102 and 103 of 35 U.S.C., and therefore should be allowed. Applicants respectfully request favorable reconsideration, entry of the present amendment, and formal allowance of the claims.

Allowed Claims

Claims 1, 4 and 5 are allowed.

Rejections under 35 U.S.C. 112

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is said to be insufficient antecedent basis for the term "said signals."

This rejection is respectfully traversed. Claim 9 has now been amended to delete "said" from the term.

Art Rejections

Claims 10 and 14 are rejected under 35 U.S.C. 102(b) As anticipated by Paisey et al.

This rejection is respectfully traversed. Claim 10 has been amended to recite the methods for determining the

levels of glucose in the sample. None of these methods are disclosed in Paisey et al. Claim 14 has been cancelled as being redundant.

Claims 6-8 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paisey et al. in view of Sigma Chemical Company Catalog 1992.

This rejection is respectfully traversed. Claim 6 has been amended to recite that the kit for determining the level of glucose in the blood requires means for measuring hemoglobin in a sample. In contrast thereto, Paisey et al. do not measure glucose levels in the blood, but measure glycosylation of hair and the measure of chronic hyperglycemia. The method of Paisey et al. measures glycosylated hemoglobin using a method that distinguishes between glycosylated hemoglobin and fetal hemoglobin. The Examiner concedes that Paisey et al. do not teach the use of equivalent and well-known glucose measuring techniques or the use of functionally equivalent reagents. This would be expected, because Paisey et al. measure glycosylated hemoglobin and fetal hemoglobin, so one skilled in the art would not expect Paisey et al. to use the same reagents and detection methods as claimed herein. Paisey et al. do not measure glucose levels in the blood, rather, Paisey et al. distinguish between fetal and glycosylated hemoglobin.

Paisey et al. measure glycosylation of hair and the measure of chronic hyperglycemia. The only relation between glycosylation and the method of the present invention is that the extent of glycosylation measure the average glucose level over a period of weeks. Indeed, one way of measuring glycosylation is by extracting glucose from hair, but this is from the hair shaft proteins and not from the blood within the blood vessels in the hair bulb (which is not part of the hair shaft) where the free glucose may be found.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paisey et al. in view of Albarella et al.

This rejection is respectfully traversed. Albarella et al. add nothing to Paisey et al. with respect to measuring hemoglobin, rather than distinguishing between fetal hemoglobin and glycosylated hemoglobin. Claim 6, from which claim 9 depends, has not been amended to recite that the kit is for measuring hemoglobin in a sample.

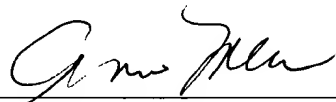
It is respectfully requested that the present amendment be entered because it raises no new issues. The limitations added by the present amendment are those limitations which previously appeared in allowed claim 1. The present amendment is merely to place the claims into condition for allowance.

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Reply to Office Action of September 29, 2004

In view of the above, it is respectfully submitted
that the claims are now in condition for allowance, and
favorable action thereon is earnestly solicited.

Respectfully submitted,

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